

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

TRIGINAL D. JACKSON,

Petitioner,

v.

CIV 11-0294 JAP/KBM

STATE NEW MEXICO, and
ANTHONY ROMERO, Warden,

Respondents.

ORDER DENYING PETITIONER'S REQUESTS

This is a habeas matter under 28 U.S.C. § 2254 where the Court granted Petitioner permission to proceed *in forma pauperis* and ordered Respondents to file an answer. *See Docs. 8, 9.* Petitioner requests discovery, permission to pay the filing fee on a “monthly payment plan,” and a schedule of payments, and an order “releasing” him. *See Docs. 11, 12.*

His request for a payment plan is moot in light of the fact that, by granting him *in forma pauperis* status, the Court has waived any filing fee. *See Doc. 8* (“may proceed without prepayment of costs or other fees”).

His request for discovery is premature. “A habeas petitioner . . . is not entitled to discovery as a matter of ordinary course. *Bracy v. Gramley*, 520 U.S. 899, 904 (1997); *Curtis v. Chester*, 626 F.3d 540, 549 (10th Cir. 2010) (same). Under the federal rules governing habeas proceedings, the Court will first review all the materials submitted with the answer, decide whether to order the record proper, and look at the merits of the claims. If further materials are necessary to resolve the matter, the Court will consider expanding the record. *See, e.g., Hooks v. Workman*, 606 F.3d 715, 730 n.14 (10th Cir. 2010) (discussion of Rules 6 and 7).

His request for “release” further explains his allegations. As such, the Court considers the motion as another amended petition. This constitutes Petitioner’s second amended petition, excluding the “errata” he recently filed. *See Docs. 1, 7, 10*. Petitioner is forewarned that the Court will not entertain any further amendments or submissions to supplement his claims absent a showing of good cause. However, the Court will allow Petitioner to file a response to the answer, if he so wishes.

Wherefore,

IT IS HEREBY ORDERED that Petitioner’s request for discovery and a payment schedule (*Doc. 11*) is DENIED.

IT IS FURTHER ORDERED that Petitioner’s motion requesting “release” (*Doc. 12*) is construed as a second amended petition. *The Court will not entertain any further amendments absent a showing of good cause.*

IT IS FURTHER ORDERED that, in formulating their answer, Respondents consider Petitioner’s amended and second amended petitions. *See Docs. 1, 7, 11*.

IT IS FINALLY ORDERED that Respondents file their comprehensive answer by Friday, June 17, 2011; Petitioner shall file his response, if any, by Friday, July 1, 2011


UNITED STATES CHIEF MAGISTRATE JUDGE